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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/799,946
Filing Date: March 11, 2004
Appellant(s): WALKER ET AL.

Geoffrey P. Shipsides
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 4/02/2008 appealing from the Office action mailed 09/04/2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct.

The changes are as follows: Applicant has not properly listed Magrab as an extrinsic reference applied to claims 1,2,4,6,9,10,11,15,28,81-84 and 86 (see the bottom of page 7 to page 8 in the Final Rejection of 09/04/2007); and by proxy ("as applied...above") to claims 3, 5, 7, 8 and 12; and by proxy ("as applied...above") to claims 13, 14,16-21, 30, 33-43, 85 and 87-91; and by proxy ("as applied...above") to claims 22, 23 and 24. Magrab was applied in every rejection of record.

Magrab as an extrinsic reference is properly cited in the final action as a source of information regarding the motivation to one of ordinary skill in the art. Applicant was clearly on notice of the presence of the Magrab reference since it was specifically argued against in the Appeal Brief (pp. 14 of 32, final paragraph on that page, continuing through the first half of pp. 15).

Additionally, Dependent claims inherently act to reject the claims upon which they depend, and as such claims 1 and 2 are considered to be rejected over Brown et al. in view of Rozenkranc in view of Anderson as well, and are listed as such below. This does not constitute a new rejection.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

US 6,185,823	Brown	2-2001
US 6,276,061	Rozenkranc	8-2001
US 5,761,814	Anderson	6-1998

Magrab, Edward. Integrated Product and Process Design and Development. (c) 1997 CRC press LLC, pp.143. "Magrab" herein.

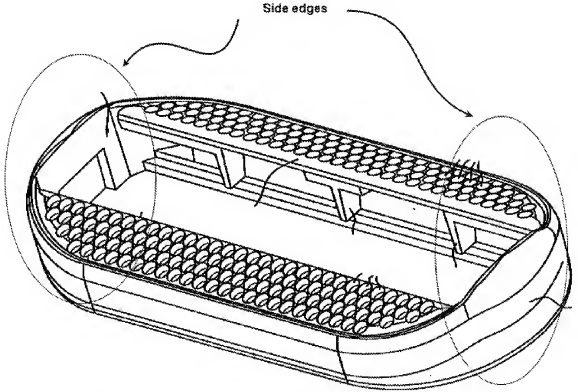
Parmley, R.O. Illustrated Sourcebook of Mechanical Components. (c) 2000 McGraw-Hill. Chapter 14 and 20. Pages 14-8,14-9 and 20-22 through 20-26. Online version available at: http://www.knovel.com/knovel2/Toc.jsp?bookID=323&VerticalID=0. “Parmley” herein.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 2, 4, 6, 9 ,10, 11, 15, 28, 81-84, and 86 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown in view of Rozenkranc, with extrinsic evidence from Magrab.

Regarding claim 1, Brown discloses a shaving blade unit (figure 14) comprising: a housing having a front edge (12 on the left, figure 14), a rear edge (12 on the right, figure 14) and side edges (see figure below)



extending between the front and rear edges, the housing defining an aperture (see below, the fact that there are multiple apertures is also implied by the figures)

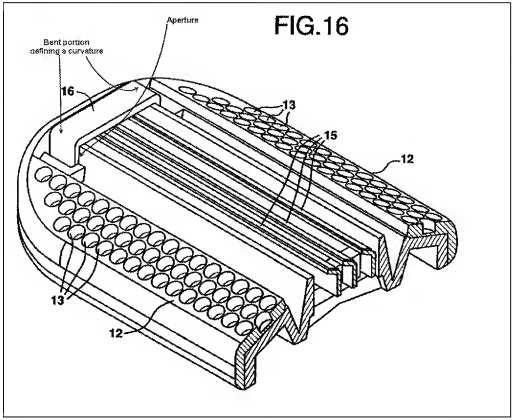


FIG.16

between the front and rear edges; one or more shaving blades between the front edge and the rear edge (seen in figure 14), the one or more blades having cutting edges arranged to define a cutting region (the "shaving surface" of figure 12 is a cutting region); and a clip arranged to retain the one or more shaving blades on the housing(see clip 16, figure 14), the clip having a leg received by the aperture(the leg of 16 can be seen to depend into one of the apertures in figure 14 or 16), the leg having a bent portion defining a curvature (16 is bent at approximately a 90 degree angle as seen in figure 14) to secure the clip to the housing (the legs of the clip secure it to the housing, as demonstrated in figure 14). As seen above, examiner has taken the reasonably broad interpretation of the term "leg" such that the "leg" extends from just before the bend, across the bend and into the housing. This is reasonable, since there is no

definition of leg provided in the specification, or in common sense that would preclude such an interpretation of that term.

Brown shows a trimming blade assembly in figure 14, comprising the front v-shaped notch, the clip retaining aperture and the sole rear facing blade. The clip clearly depends into the trimming blade assembly, and retains the trimming blade on the housing as a result. It is also clear that the primary blades (the two front facing blades in figure 14) are retained by the clip which depends into an aperture on the back of the blade housing, into an aperture similar to the front aperture.

Brown does not disclose that when the trimming blade assembly is "in contact with a user's skin, the cutting edges of the one or more shaving blades are disposed on a surface facing away from a surface contacting the users skin".

Rozenkranc teaches a trimming blade assembly positioned such that when the trimming blade assembly is "in contact with a user's skin, the cutting edges of the one or more shaving blades are disposed on a surface facing away from a surface contacting the users skin". See figure 3a, which shows this quite clearly. Rozenkranc teaches having a trimming blade 4 face away from a top surface (the top surface being either 5 or 6, since both are proximal to the shaving blades 3 in Rozenkranc). This style of trimming blade is clearly different than the trimming blade as seen in Brown, however it is also prima facie clear from Rozenkranc that the trimming blade of Rozenkranc has separate marketability.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Brown by having the trimming blade be oriented in a direction away

from the top surface, so that the user would have multiple options when positioning the razor. The motivation to combine the trimming blade of Rozenkranc with the razor of Brown is that by providing multiple options for positioning the razor, an additional level of marketability is added to the razor. It is known that providing additional features is desirable to enhance the marketability of a product. Since all the blades including the trimming blade of Brown **is retained by clip, it follows that the clip would still be used to retain the trimming blade when it is reoriented,** as per Rozenkranc. See *In re Japikse,* 86 USPQ 70 which held that rearranging the parts of an invention involves only routine skill in the art. Also see In re Rose 105 USPQ 237 (CCPA 1955) and also In re Yount (36 C.C.P.A. (Patents) 775, 171 F.2d 317, 80 USPQ 141 which show that It would have been obvious to one of ordinary skill in the art at the time of the invention to extend the clip length as necessary to retain all the blades (trimming and shaving) since it has been held that changing the size or range of an article is not ordinarily a matter of invention. Appropriate selection of size, weight, ratios, etc. is considered routine, and is typically a matter of design choice.

Additionally and/or alternatively, It has been held that the combination of elements known in the prior art to be used in accordance with their known functions *is unpatentable as a matter of law* absent a showing that the combination has results which are *unexpectedly* advantageous over the prior art. Please see *Sakraida v. Ag Pro, Inc.* U.S. Supreme Court No. 75-110 425 US 273, 189 USPQ 449 (1976), Which states "patent[s] for combination that only unites old elements with no change in their respective functions withdraws what is already known into field of its monopoly and

diminishes resources available to skillful men" and [a] patent [which] simply arranges old elements with each performing the same function it had been known to perform, although perhaps producing a more striking result than in previous combinations…are not patentable under standards appropriate for a combination patent"; also see *Anderson's Black Rock, Inc. v. Pavement Salvage Co., Inc.* U.S. Supreme Court 396 US 57, 163 USPQ 673 (1969) which states "while the combination of old elements performed a useful function, it added nothing to the nature and quality of the radiant-heat burner already patented". Similarly here, primary blades, trimming blades, clips and apertures for clips to be received are shown explicitly in the prior art.

The Supreme Court in *KSR International Co. v. Teleflex Inc. et al.* No. 04-1350, 550 U.S. _____(2007) affirmed both Sakraida and Anderson's requirement that to be patentable a combination needed to provide some synergistic effect. See Slip op. at 13 lines 3-19. Using known elements for their known functions is *as a matter of law not patentable*, since it removes resources available to skillful men, contrary to U.S. Const., Art. I §8, cl.8. which provides patent monopolies to promote the progress of useful arts. See Slip op. *KSR* at 24 lines 5-7.

Each of the elements Housing, primary blades, trimming blade assembly, clips for the retention of blades *in general* and apertures for the reception of clips are known as seen in the cited prior art (above); their combination is unpatentable absent a showing that one of ordinary skill would be unable to effect their combination, or their combination provides unexpectedly good results (more than a duplicated effect).

Additionally and/or Alternatively, The fact that a single clip retains two sets of blades is not inventive and falls under the category of ***"ordinary creativity"***. See *KSR International Co. v. Teleflex Inc. et al.* No. 04-1350, 550 U.S. _____(2007) slip op at 17, lines 8 and 9.

Additionally and/or alternatively, a clear reason to use the same clip to retain both the primary and trimming blades is stated in Magrab "Integrated Product and Process Design and Development" (*extrinsic)* which is a general reference used in undergraduate mechanical engineering courses. It states, "The basic idea in the design for assembly is to first reduce the number of components (parts, pieces)", and "The principles governing the design for assembly are as follows: 1. Simplify, integrate and reduce the number of parts, because for each part there is an opportunity for a defective part and an assembly error. Fewer parts means less of everything that is needed to manufacture a product." (underlining is original). Since clips are used to retain any type of blade (including those that face in different directions) it is clear that one of ordinary skill in the art would have used the same component "clip" to retain multiple sets of blades, since they are similar and would be capable of similar retention, and integrating the attachment function for both blade sets to a single element (rather than two clips) will allow for a more error free assembly. This is a reason to not use separate clips as applicant suggests to be the "conclusion" of the use of *a* clip to attach the trimming blade. This rationale would be known to one of ordinary skill, since Magrab is a general engineering reference.

As seen above, multiple legal theories support a showing of prima facie obviousness for claim 1. A strong likelihood exists, therefore, that there is no inventive or patentable material claimed, or capable of being claimed that would meet the threshold for patentability.

Regarding claim 2, Brown et al. further discloses a shaving blade wherein the aperture extends from a top surface to a bottom surface of the housing (in figure 13 the aperture extends from the surface corresponding to the edges of the primary blade structure to the opposite surface). In the alternative, it would have been obvious to have the clip extend through to the other side of the housing, since the modification of the dimensions of an element is within the level of ordinary skill in the art and can be accomplished as a matter of routine design choice.

Regarding claim 4, Brown et al. further discloses that the aperture is between the side edges, as can be clearly seen in figure 13 and 14 and all figures.

Regarding claim 6, Brown et al. further discloses that the leg has a straight portion (the portion of 16 which depends into the housing is straight, as can be seen in figure 14).

Regarding claim 9, Brown et al. further discloses that the clip (16 figure 13) has multiple legs (two legs can be seen depending into the respective apertures (figure 14, or 16).

Regarding claim 10, Brown et al. further discloses that the legs extend through corresponding apertures in the housing, between the front and rear edges. Element 16 depends into the housing at the front and rear, and is seen/inferred to have corresponding apertures (one in the front and one in the rear).

Regarding claim 11, Brown et al. further discloses that each of the legs has a bent portion defining a respective curvature (bent portions are seen on element 16 in figure 13). The leg begins just before the curve in the clip, as seen in figures 14-16.

Regarding claim 15, Brown et al. further discloses multiple clips (column 6 lines 50-56) extending into associated apertures (one set is seen in figure 14, the other is defined by column 6 lines 53-56 to be at the opposite end, not shown). The clips are arranged to retain one or more blades (seen in figure 14), each of the legs having a bent portion (seen in figure 14), which secures the clip to the housing (as seen in figure 14).

Regarding claim 28, Brown et al. discloses a metal clip that was formed by crimping. Crimping is defined as pressing into folds or curves, which is how the clip 16 of Brown was formed.

Furthermore, the method of forming the device is not germane to the issue of patentability of the device itself. The limitation has been given patentable weight, as far as it infers structure in the clip.

Furthermore, in the alternative, crimping metal is both notorious and well known. Examiner takes official notice that making a metal component with bends using the process of crimping (or folding) is well known.

Regarding claims 81-84 and 86, the combination of Brown and Rozenkranc meets the limitations of these claims. The housings of Brown and Rozenkranc both have tops and bottoms, and when the trimming blade assembly is configured as in Rozenkranc, it defines a cutting region mounted along the rear edge of the bottom surface of the housing. (see the figures of Rozenkranc). The cutting blade also then is facing away from the top surface. (see figures 1 and 2A) Since the connection of Brown is by a clip having legs depending into apertures in the housing, it follows that the same method would be applied to the attachment of the obvious addition- the trimming blade of Rozenkranc in addition to the blade carrier of Brown. See also *In re Japikse,* 86 USPQ 70 which held that rearranging the parts of an invention involves only routine skill in the art.

Claims 1-3, 5, 7, 8, 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown et al. in view of Rozenkranc , with extrinsic evidence from Magrab, as applied to claims 1, 2, 4, 6, 9 ,10, 11, 15, 28, 81-84, and 86 above, in further view of Anderson et al.(USPN 5,761,814).

Regarding claims 2 and 3 Brown et al. does not disclose a shaving blade unit, wherein the leg is bent about at least a portion of the bottom surface of the housing. Brown is silent as to the configuration of the leg at the bottom surface of the housing.

Anderson et al teaches a blade retaining clip which is bent about at least a portion of the bottom surface, as seen in figures 1 and 5.

In the same field of invention it would have been obvious to one skilled in the art at the time of the invention to modify Brown by making the legs bend around a portion of the bottom surface as taught by Anderson, so that the clip is more secure. The motivation to combine is that having a bent portion as opposed to a straight portion is a more secure connection.

It should be clear that in this combination, Anderson shows a slot/aperture, wherein the clip leg is received, which extends through to the bottom surface of the cartridge/ blade housing, as required by claim 2 and also therefore claim 3.

Regarding claim 5, Brown et al. does not disclose that the leg is bent about at least a portion of a bottom surface of the housing.

Anderson et al teaches a blade retaining clip which is bent about at least a portion of the bottom surface, as seen in figures 1 and 5.

In the same field of invention it would have been obvious to one skilled in the art at the time of the invention to modify Brown by making the legs bend around a portion of the bottom surface as taught by Anderson, so that the clip is more secure. The motivation to combine is that having a bent portion as opposed to a straight portion is a more secure connection.

Regarding claim 7, Brown et al. discloses that the clip has multiple bent portions (at least a front bend and a rear bend, seen in figure 13), but does not disclose that each leg has multiple bent portions.

Anderson teaches that each leg has multiple bent portions (seen in figure 1).

In the same field of invention it would have been obvious to one skilled in the art at the time of the invention to modify Brown by making the legs have multiple bends as taught by Anderson, so that the clip is more secure. The motivation to combine is that having multiple bent portions, as opposed to a single bent portion with a straight portion, is a more secure connection.

Regarding claim 8, Brown et al. does not disclose that the leg has a curvature greater than 90 degrees, but teaches that the curvature is exactly 90 degrees(figure 13). The 'curvature' as defined by applicant is the summation of the angles of the bends a leg makes.

Anderson et al teaches legs (seen in figure 1) with a curvature of greater than 90 degrees (figure 1; there are 2 bends, each having an angle of at least 90 degrees, or in the alternative figure 9 shows 2 different bends, the angles of which add to approximately 120 degrees).

In the same field of invention it would have been obvious to one skilled in the art at the time of the invention to modify Brown by making the legs have multiple bends to form a curvature greater than 90 degrees as taught by Anderson, so that the clip is more secure. The motivation to combine is that having multiple bent portions to form a curvature greater than 90 degrees, as opposed to a single bent portion with a straight portion, is a more secure connection

Regarding claim 12, Brown does not teach that each of the legs is bent about a portion of the bottom surface of the housing, but is silent as to their configuration at the bottom surface.

Anderson et al. teaches that each of the legs is bent about at least a portion of the bottom surface (seen clearly in figure 5).

In the same field of invention it would have been obvious to one skilled in the art at the time of the invention to modify Brown by making the legs bend around a portion of the bottom surface as taught by Anderson, so that the clip is more secure. The motivation to combine is that having a bent portion as opposed to a straight portion is a more secure connection.

Claims 13, 14, 16-21, 30, 33-43 and 85 and 87-91 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown in view of Rozenkranc, with extrinsic evidence from Magrab in view of Anderson as applied to claims 1-3, 5, 7, 8, and 12 above, and further in view of Parmley.

Regarding claim 13, Brown et al in view of Rozenkranc in view of Anderson does not teach that the legs have differing curvatures. The structure defined has been composed of metal clips combined with plastic components, so the field of problem solving endeavor with which the invention is concerned is use of metal with plastic. Parmley is a general reference book for all mechanical components, having sections devoted to the problem of connecting plastic and metal, and offers a multitude of examples. Parmley shows asymmetric retaining clips that are adapted to their functions and the structures they connect. This is seen on page 14-9, the circled figure, as well as 20-22 figure 2, figure 8 b and d, as well as the U-clips on page 20-25. The limitation that

the legs have differing curvatures lacks criticality in the specification. Clips are made to correspond to and conform around the structures to which they are attached. Since the structure of Brown in view of Anderson is symmetric, it follows that the clips also would be symmetric, and therefore have identical curvatures. If the structure the clip was used to retain however was not symmetrical any person skilled in the art would have adapted the clip of Brown in view of Anderson to conform to the new asymmetrical structure. Furthermore, In the same field of invention it would have been obvious to one skilled in the art at the time of the invention to modify Brown in view of Anderson by making the clips have differing curvatures as taught by Parmley to prevent vibration damage to the razor. The motivation to combine is that Parmley discloses that metal can be disposed in plastic so as to lessen vibrational loosening.

Regarding claim 14, Anderson teaches that each leg have a curvature greater than 90 degrees (this is especially evident in figures 5 or 9; figure 9 shows 2 different bends, the angles of which add to approximately 120 degrees).

In the same field of invention it would have been obvious to one skilled in the art at the time of the invention to modify Brown by making the legs have multiple bends to form a curvature greater than 90 degrees as taught by Anderson, so that the clip is more secure. The motivation to combine is that having multiple bent portions to form a curvature greater than 90 degrees, as opposed to a single bent portion with a straight portion, is a more secure connection.

Regarding claim 16, Brown et al in view of Rozenkranc in view of Anderson does not teach that the legs have differing curvatures. The structure defined has been

composed of metal clips combined with plastic components, so the field of problem solving endeavor with which the invention is concerned is use of metal with plastic. Parmley is a general reference book for all mechanical components, having sections devoted to the problem of connecting plastic and metal, and offers a multitude of examples. Parmley shows asymmetric retaining clips that are adapted to their functions and the structures they connect. This is seen on page 14-9, the circled figure, as well as 20-22 figure 2, figure 8 b and d, as well as the U-clips on page 20-25. The limitation that the legs have differing curvatures lacks criticality in the specification. Clips are made to correspond to and conform around the structures to which they are attached. Since the structure of Brown in view of Anderson is symmetric, it follows that the clips also would be symmetric, and therefore have identical curvatures. If the structure the clip was used to retain however was not symmetrical any person skilled in the art would have adapted the clip of Brown in view of Anderson to conform to the new asymmetrical structure. Furthermore, In the same field of invention it would have been obvious to one skilled in the art at the time of the invention to modify Brown in view of Anderson by making the clips have differing curvatures as taught by Parmley to prevent vibration damage to the razor. The motivation to combine is that Parmley discloses that metal can be disposed in plastic so as to lessen vibrational loosening.

Regarding claim 17, Anderson teaches that each leg have a curvature greater than 90 degrees (this is especially evident in figures 5 or 9; figure 9 shows 2 different bends, the angles of which add to approximately 120 degrees).

In the same field of invention it would have been obvious to one skilled in the art at the time of the invention to modify Brown by making the legs have multiple bends to form a curvature greater than 90 degrees as taught by Anderson, so that the clip is more secure. The motivation to combine is that having multiple bent portions to form a curvature greater than 90 degrees, as opposed to a single bent portion with a straight portion, is a more secure connection.

Regarding claim 18, Brown et al. in view of Rozenkranc does not disclose that the leg is bent about at least a portion of a bottom surface of the housing.

Anderson et al teaches a blade retaining clip which is bent about at least a portion of the bottom surface, as seen in figures 1 and 5.

In the same field of invention it would have been obvious to one skilled in the art at the time of the invention to modify Brown by making the legs bend around a portion of the bottom surface as taught by Anderson, so that the clip is more secure. The motivation to combine is that having a bent portion as opposed to a straight portion is a more secure connection.

Regarding claim 19, Brown further discloses that the clips are located in-board of the front, rear and side edges (as seen in figure 14) and are spaced from each other (since the clips are on opposite sides of the housing, and do not intersect, they are spaced from each other).

Regarding claim 20, Brown further discloses that each clip is located adjacent to a respective side edge (as seen in figure 14, and described in the specification column

6 lines 53-56). Brown shows each blade to have a blade length (seen in figure 14, the length from the edge to the back of the blade).

Regarding claim 21 Brown discloses an elastomeric member affixed to the housing (12 figure 14). Brown further discloses that the length of the elastomeric member is greater than the length of the blades (since the elastomeric member extends all around the blade structure, the front and rear sections are much longer than the blade edges; this is seen in figure 14).

Regarding claim 30, Brown et al in view of Rozenkranc in view of Anderson does not teach that the legs have differing curvatures. The structure defined has been composed of metal clips combined with plastic components, so the field of problem solving endeavor with which the invention is concerned is use of metal with plastic. Parmley is a general reference book for all mechanical components, having sections devoted to the problem of connecting plastic and metal, and offers a multitude of examples. Parmley shows asymmetric retaining clips that are adapted to their functions and the structures they connect. This is seen on page 14-9, the circled figure, as well as 20-22 figure 2, figure 8 b and d, as well as the U-clips on page 20-25. The limitation that the legs have differing curvatures lacks criticality in the specification. Clips are made to correspond to and conform around the structures to which they are attached. Since the structure of Brown in view of Anderson is symmetric, it follows that the clips also would be symmetric, and therefore have identical curvatures. Rozenkranc is asymmetric. If the structure the clip was used to retain however was not symmetrical any person skilled in the art would have adapted the clip of Brown in view of Anderson to conform to the new

asymmetrical structure. Furthermore, In the same field of invention it would have been obvious to one skilled in the art at the time of the invention to modify Brown in view of Anderson by making the clips have differing curvatures as taught by Parmley to prevent vibration damage to the razor. The motivation to combine is that Parmley discloses that metal can be disposed in plastic so as to lessen vibrational loosening.

Regarding claim 34, Brown et al. further discloses that the legs extend through corresponding apertures in the housing, between the front and rear edges. Element 16 depends into the housing at the front and rear, and is seen to have corresponding apertures (one in the front and one in the rear)

Regarding claim 35, Brown further discloses the apertures are located between the front and rear edges of the housing (seen in figure 14).

Regarding claim 36, Brown further discloses the apertures are located between the side edges of the housing (seen in figure 14).

Regarding claim 37, while Brown in view of Rozenkranc is silent as to the configuration of legs below the primary shaving surface, Anderson teaches multiple bent portions defining the curvature (as seen in figures 5 and 9).

In the same field of invention it would have been obvious to one skilled in the art at the time of the invention to modify Brown by making the legs have multiple bends as taught by Anderson, so that the clip is more secure. The motivation to combine is that having multiple bent portions, as opposed to a single bent portion with a straight portion, is a more secure connection.

Regarding claim 38, Brown teaches having a straight portion. It can be seen in figure 14, depending into the apertures defined in the housing.

Regarding claim 39, Brown teaches the straight portion depending into the housing, but is silent as to its continuing configuration. It would have been obvious to one skilled in the art at the time of the invention to make the straight portions depend straight through the housing, since the applicant does not state any benefit for this arrangement, nor does it solve any stated problem. Anderson shows clips extending to the opposite side of a housing. Clips are made to correspond to and conform around the structures to which they are attached. See Brown and Anderson- all figures. Since the structure of Brown in view of Anderson is symmetric and the interior of the cavity of Brown is straight all the way through the housing (seen in figure 13), and the clips of Anderson extend to the opposite side of the housing, it follows that the clips would follow (or approximate) this contour, and therefore be straight all the way through the cavity. Since the structure the clip was retained within was straight, any person skilled in the art would have adapted the clip of Brown in view of Anderson to conform to the straight walled cavity (aperture).

Regarding claim 40, Anderson teaches that each leg have a curvature greater than 90 degrees (this is especially evident in figures 5 or 9; figure 9 shows 2 different bends, the angles of which add to approximately 120 degrees).

In the same field of invention it would have been obvious to one skilled in the art at the time of the invention to modify Brown by making the legs have multiple bends to form a curvature greater than 90 degrees as taught by Anderson, so that the clip is

more secure. The motivation to combine is that having multiple bent portions to form a curvature greater than 90 degrees, as opposed to a single bent portion with a straight portion, is a more secure connection.

Regarding claim 41, Brown et al. does not disclose that the leg is bent about at least a portion of a bottom surface of the housing.

Anderson et al teaches a blade retaining clip which is bent about at least a portion of the bottom surface, as seen in figures 1, 5, and 9.

In the same field of invention it would have been obvious to one skilled in the art at the time of the invention to modify Brown by making the legs bend around a portion of the bottom surface as taught by Anderson, so that the clip is more secure. The motivation to combine is that having a bent portion as opposed to a straight portion is a more secure connection.

Regarding claim 42, Brown et al meets all the limitations of the claim except that the clip be aluminum. Brown is silent as to the composition of the clip, and does not teach away or prohibit the use of Aluminum, or any other material. Examiner took official notice that it is well known and notorious in the art to make razor clips from aluminum, because they will not rust in the previous office action dated 4/18/2006, and applicant has not traversed or otherwise objected to Examiner's notice. This constitutes an admission by applicant that it is known to make razor clips from aluminum.

In the same field of invention it would have been obvious to one skilled in the art at the time of the invention to modify the clips by making them out of aluminum, since aluminum will not rust, which is important to a wet razor.

Furthermore, it has been held to be within the general skill of a worker in the art to select a known material on the basis of suitability for the intended use as a matter of obvious mechanical design expediency. *In re Leshin,* 125 USPQ 416.

Regarding claim 43, Brown et al. further teaches a metal clip that was formed by crimping. Crimping is defined as pressing into folds or curves, which is how the clip 16 of Brown was formed.

Furthermore, the method of forming the device is not germane to the issue of patentability of the device itself. The limitation has been given patentable weight, as far as it infers structure in the clip.

In the office action dated 4/18/2006, Examiner took official notice that crimping is well known and notorious for making metal components. Applicant did not traverse this notice, and therefore is *considered to have admitted that crimping is a well known and notorious process*.

Regarding claims 85 and 87-89, the combination of Brown and Rozenkranc meets the limitations of these claims. The housings of Brown and Rozenkranc both have tops and bottoms, and when the trimming blade assembly is configured as in Rozenkranc, it defines a cutting region mounted along the rear edge of the bottom surface of the housing. (see the figures of Rozenkranc). The cutting blade also then is facing away from the top surface. (see figures 1 and 2A) Since the connection of Brown is by a clip having legs depending into apertures in the housing, it follows that the same method would be applied to the attachment of the obvious addition- the trimming blade of Rozenkranc in addition to the blade carrier of Brown. See also *In re Japikse,* 86 USPQ

70 which held that rearranging the parts of an invention involves only routine skill in the art.

Regarding claims 90 and 91, the discussion above makes clear that each limitation of the claim is met by the combination. Having clips extend to the bottom surface is an obvious variation of having clips extend only partially through. There are reasons one would select either making it a design choice. One may select not extending them through to reduce the risk of exposed clip edges, and one may extend them through to allow for secure hold and disassembly capability. Defining two pairs of apertures is implicitly disclosed in the Brown reference, as one of ordinary skill would recognize the front aperture, the fact that there is a corresponding rear aperture, and the face that there is a corresponding set of apertures on the half of the razor not shown in the figures of Brown. One of ordinary skill in the art would infer this from the disclosure of Brown. The claimed slot of claim 90 it the same as the claimed opening of claim 30, discussed above.

Provision of a slot is not inventive. Slots are known where a designer wishes an element to extend through something. This is common sense.

Claims 22, 23, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown in view of Rozenkranc , with extrinsic evidence from Magrab, in view of Anderson further in view of Parmley as applied to claims 13-14, 16-21 and 30 above, and further in view of Rozenkranc (USPN 6,276,061).

Brown in view of Rozenkranc in view of Anderson does not disclose that the elastomeric member have fins.

Rozenkranc additionally teaches a razor with an elastomeric member having fins(6 figure 1).

In the same field of invention it would have been obvious to one skilled in the art at the time of the invention to modify Brown in view of Rozenkranc in further view of Anderson by making the elastomeric member have fins as taught separately by Rozenkranc, to provide better skin stretching capabilities. The motivation to combine is that having an elastomer configured as fins will better stretch the skin, preparing it for a shaving operation.

Regarding claim 23, Brown teaches having the elastomeric member be longer than the blade edge, therefore if it were modified to be comprised of fins, the fins would be longer than the blades proximal to the blade edge.

In the same field of invention it would have been obvious to one skilled in the art at the time of the invention to modify Brown in view of Anderson by making the elastomeric member have fins extending the full length of the existing elastomeric member proximal to the blade edges as taught by Rozenkranc, to provide better skin stretching capabilities. The motivation to combine is that having an elastomer configured as fins will better stretch the skin, preparing it for a shaving operation.

Regarding claim 24, The combination of Brown et al. in view of Anderson in further view of Parmley in further view of Rozenkranc teaches having fin length measured parallel to the blade axis vary from shortest farthest from the blades to

longest proximal the edges of the blades. This is because Brown shows the elastomeric member being shortest where it is furthest from the blades and longest where it is proximal to the blades, and modifying Brown to provide it with elastomeric fins would automatically result in the claimed configuration of fins.

(10) Response to Argument

Where practicable examiner will correlate the response to appellants argument with the headings and subheadings set forth in the Appeal Brief:

A. i.

Appellant argues that "There is nothing to indicate that this retaining structure is an aperture". This is incorrect. Simply look at figure 14, as the clip can clearly be seen to depend into R. The structure R clearly defines a "hole, gap" and or "slit" which appellant alleges is the common meaning of "aperture" (pp8 lines 8-11 of Appeal Brief). If the clip extends at all within the bounds of plastic structure, there is an "aperture" which is where the clip is. The aperture may be coextensive with the portion of the clip retained within the plastic.

Appellant has argued on page 7 of the Appeal Brief that "there is nothing to indicate that the rearward facing blade is intended as a trimming blade". This is untrue and irrelevant. First, examiner is quite clear about the fact that the trimming blade

teachings are coming from Rozenkranc, which undoubtedly shows a trimming blade assembly, as claimed, and provides inherent motivation for using such a trimming blade to increase the marketability of a razor. Secondly, appellant has provided no distinction between the functions of a primary and a trimming blade within the context of the claims. Trimming blades are the same as primary blades in structure. The fact that brown has a blade pointed in a direction different from the other blades clearly and unquestionably makes the blade properly characterized as a "trimming" blade. It may be used to "Trim" just as appellants "trimming blade" does. This term is merely that: a choice of terminology, since the blades in both cases *actually act to shave*. Their function is shaving. The location is the only item of interest in appellants construction, and that location is clearly taught by Rozenkranc. This argument is wholly unpersuasive.

Appellant has alleged that "the leg is not received by an aperture, which has been treated above.

Appellant alleges that the bend "defines" the leg. "leg is an amorphous term which is not cognizable as a term with specific art recognized or even common meaning. The term is therefore construed as broadly as reasonable. Examiner has taken the position that the leg begins just *before* the bend, the bend is therefore a part of the leg. This is **reasonable interpretation** of the term "leg".

Appellant has argued that Brown does not teach a "trimming blade assembly". the citation to figure 15 in the final rejection was perhaps not the most productive citation. Examiner has clarified explicitly (rather than implicitly) exactly how Brown may

be seen to constitute a trimming blade assembly with an aperture, and have a separate aperture for the primary blades. The rearward facing blade is the trimming blade, and the V, and L structures in figure 14 are clearly of the "trimming blade assembly" since they are on the side of the trimming blade. The L-structure seen in figure 14 is clearly an aperture. The confusion present is due to the fact that examiner was trying to express the fact that there are apertures on both sides of the Brown reference (though the one on the "back" side is never shown- it is implicitly disclosed from the combination of the figures in their totality).

Appellant has discussed, as a point of clarification whether the action is attempting to utilize all the blades 15 of figs. 14-16 as a trimming blade assembly. Examiner clarifies here, as above, that this confusion was inadvertent and the correct reading of Brown is that the sole rear facing blade in figure 14 is the trimming blade, with a trimming blade assembly constituting the visible V and L shaped portions thereunto abutting; and that the *separate cutting region* is defined by the two frontward facing blades as seen in figure 14. Where reference is made to figures 15 and 16, it is for reasons other than establishing the trimming blade/shaving blade distinction. This should make clear the fact that there is no "double counting" of elements.

Appellant alleges that it is improper to construe a single cutting blade within the front and rear edges as a trimming blade; this is incorrect. The claim requires that the shaving blades between the front edge and the rear edge and "having cutting edges arranged to define a cutting region" (see claim 1 lines 1-5). Clearly the "cutting region" is defined by the shaving blades, which must be between the front and rear edges.

However there is no exclusion to an additional blade outside the bounds of the "cutting edges" which is nonetheless within the "front edge and rear edge". The limitations of the claims *do not* exclude a "trimming blade" to be defined between the front edge and rear edge. The limitation that makes Brown not a 102 reference is the limitation that the shaving blades must face away from a surface contacting the user's skin while the trimming blade assembly is in contact with a user's skin, which Brown admittedly does not teach. This does not mean that the rear facing blade of Brown may not be construed as a "trimming blade"; as discussed before 'trimming blades' and 'shaving blades' both act to shave, and frankly are purely terminological constructs of the present application. Undue meaning may not be ascribed to a term, but rather it must be given its broadest reasonable interpretation. The standard of claim interpretation during prosecution is as follows: "claims in a pending application should be given their broadest reasonable interpretation" consistent with the specification and prior art. In re Pearson , 181 USPQ 641 (CCPA 1974). See additionally MPEP 904.01, and also In re Morris, 127 F.3d 1048, 44 USPQ2d 1023 (Fed. Cir. 1997). It has been established that during examination, where applicant has the ability to amend claims, the standard of claim interpretation is that the broadest reasonable interpretation be given to all the terms of a claim, *absent a specific definition provided in the specification*, which would then control. Again, construing a rear facing blade as a trimming blade and the remainder, as in figure 14, as shaving blades is not improper.

Appellant argues that since the rearward facing blade meets the limitations of the shaving blades it cannot be construed as a trimming blade. This is incorrect, since there

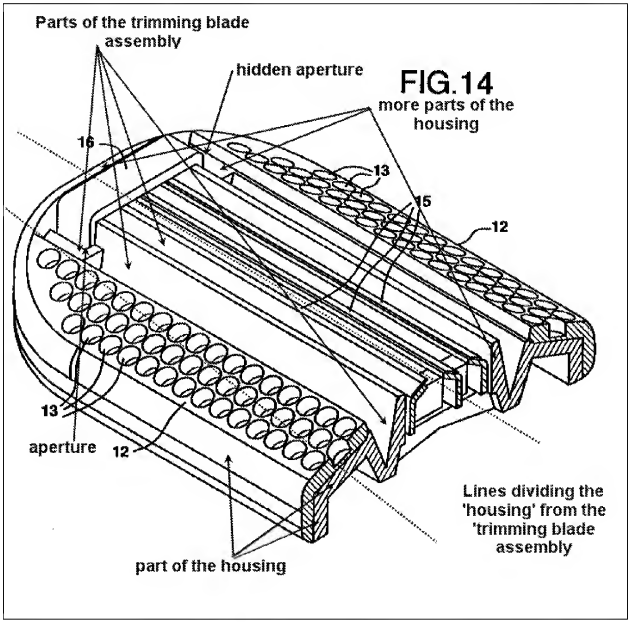
are other blades which meet the limitation of the shaving blades, leaving the rearward blade free to be defined as the trimming blade. The claim does not recite that "all" or "every" blade within the front edge and rear edge is a shaving blade. It merely recites that the shaving blades within the front and rear edges do themselves define a cutting region. Interpreting the rearward facing blade as a trimming blade does not preclude this, nor do the claim limitation preclude the terming of the rear facing blade as a "trimming blade". The trimming blade of brown is conceded to not meet the limitation that *the shaving blades must face away from a surface contacting the user's skin while the trimming blade assembly is in contact with a user's skin*; However this is exactly the teaching which Rozenkranc has supplied.

Applicant alleges that "none of the individual blades of Brown...includes..." an opening. This is not pertinent since the claims do not require an "individual trimming blade" to have an opening; the claims recite that the "trimming blade assembly" must have an opening, which is shown in figure 14, as described above: the opening/aperture is the L-shaped structure proximal the properly labeled "trimming blade" (the rearward facing blade of figure 14).

Appellant argues against the "double" construction of the retaining structure "R" as both the aperture in the housing and in the trimming blade assembly. Examiner was not "double counting" the structure. It should be implicitly clear that there are front and rear apertures, one of which is the housing aperture (the rear non-shown aperture) and the trimming blade assembly aperture (the front clearly seen aperture, as in figure 14).

The clip does "secure the trimming blade assembly to the housing" as seen in figure 14. the fact that the trimming blade assembly is *additionally* secured by the integral volumes of the housing (as seen in the cut away view of figure 14) does not preclude the "secure[ing]" of "the trimming blade assembly to the housing" by the clip which is clearly present in figure 14, even though there is additional securing taking place. The claim does not exclude the trimming assembly being integral with the housing, since as described above: "claims in a pending application should be given their broadest reasonable interpretation" consistent with the specification and prior art. In re Pearson , 181 USPQ 641 (CCPA 1974). See additionally MPEP 904.01, and also In re Morris, 127 F.3d 1048, 44 USPQ2d 1023 (Fed. Cir. 1997). It has been established that during examination, where applicant has the ability to amend claims, the standard of claim interpretation is that the broadest reasonable interpretation be given to all the terms of a claim, *absent a specific definition provided in the specification*, which would then control.

As here:



The trimming blade assembly and housing *are formed integrally with one another* in the specific embodiment of figure 14, though they would not necessarily be, as seen in figure 13, which does not show the trimming blade assembly. In figure 13 it might be reasonable to assume that the trimming assembly would be secured to the housing exclusively with a clip, since there is no other disclosure directing how the securing of

blades would take place in accordance with figure 13 (though this interpretation is not relied on).

Appellant alleges that Rozenkranc fails to teach the elements of Brown which are lacking. This is found to be moot in view of the discussion above.

Appellant is taking a narrow interpretation of 35 USC §103 by saying that "Examiner… argu[es] that Rozenkranc provides motivation to rearrange the elements to arrive at Appellants claimed device." This is not what Examiner has done, rather examiner has followed the guidelines that are well established in examining the Prior art, comparing it to the claims at bar, determining what differences are present and establishing the level of ordinary skill in the art. Examiner has established at least four separate legal theories to establish that the claimed subject matter is as a matter of law unpatentable under 35 USC §103.

Appellant argues that one seeking to add the trim blade of Rozenkranc to the blade unit of Brown would seek to "drastically alter" the clip of Brown. First, the combination of Brown and Rozenkranc is not limited to considering adding a trimming blade to Brown. The teachings of Brown may equally be applied to Rozenkranc. If Rozenkranc were modified with the teaching of Brown that all blades should be retained by clips, then clearly this obviates the argument against "wholesale redesign" since the only redesigning would be adding a clip to retain blades with their original configuration as seen in Rozenkranc. The combination of Brown and Rozenkranc is not a one direction consideration (Brown solely being modified by Rozenkranc), rather the whole body of teachings from both references is being considered. To say Brown would not be

modified by Rozenkranc is much too simplistic an interpretation of the Graham Inquiries. Moreover, shaping a clip to do its intended function of retaining several blade is not inventive or difficult and does not serve as persuasive evidence that one of ordinary skill would be incapable of redesigning a clip in accordance with the necessary shape to retain variously spaced blades. See *KSR International Co. v. Teleflex Inc. et al.* No. 04-1350, 550 U.S. _____(2007) slip op. at 12, "the combination of familiar element according to known methods is likely to be obvious when it does no more than yield predictable results." Here a trimming blade on the back of a housing is clearly shown in the prior art (Rozenkranc). Also clearly shown is the use of clips to retain blades by depending into apertures (Brown). The Use of these two teachings together in a newly designed razor only unites that which is old and well known, the result being predictable: that the razor will have blades pointing as in Rozenkranc, and be retained by clips, as in Brown. It is no more difficult for a designer of a razor to *decide* to use these elements than to choose to use a handle and blades. They are well known as seen in the cited prior art, and as such constitute old elements. Combining them provides no synergy, no unexpected result, and as such is not the subject of invention.

The citation to In re Ratti is not persuasive, since examiner believes In re Ratti, decided by the Federal circuit to be inconsistent with the Graham Inquiries *flexible approach* that is used in every Supreme Court case of interest (Graham v. John Deere Anderson's Black Rock, Sakraida, —each cited supra; and United States v. Adams383 U.S. 39, 40 (1966)) the *flexibility* of which has been recently affirmed in *KSR*

International Co. v. Teleflex Inc. et al. No. 04-1350, 550 U.S. _____(2007) slip op at 11, lines 25-35.

KSR elaborates : "if a technique has been used to improve one device, and a person of ordinary skill would recognize that it would improve similar devices in the same way, using the technique is obvious *unless its actual application is beyond his or her skill.*" (slip op at 13, 10 lines from the bottom, emphasis added). In this case the technique may be "clips" depending into a housing to secure blades, shown in Brown; or trimming blades on separate surfaces for additional maneuverability, which is shown in Rozenkranc. Either one provides the template for holding the claim obvious over the combination since the application of either would not "be beyond his or her skill" as shown by the entire record of references which depict the level of ordinary skill. **It is not the job of courts to narrowly construe the inquiry of obviousness into A in view of B, but to consider the totality of the teachings present in all of the references at the time of the invention.**

Appellant alleges that one of ordinary skill would not me "motivated" to rearrange. As described above, this allegation takes too narrow the scope of 35 USC §103, and is not persuasive. Additionally The Supreme Court in *KSR International Co. v. Teleflex Inc. et al.* No. 04-1350, 550 U.S. _____(2007), 82 USPQ2d at 1396, specifically foreclosed the argument that a specific teaching suggestion or motivation is required to support a showing of obviousness. See the Board decision *Ex parte Smith* –USPQ2d--, slip op at 20, (Bd. Pat. App. & interf. June 25, 2007).

The allegation that the function of the clip is modified from it's use in Brown is not persuasive. The clip retains blades in Brown, it retains blades in the final assembly. Retaining blades with a clip is not inventive, It is old and well known. Shaping a clip in accordance with the desired position of all the blades is an inherent design step in any clip retained blade structure.

Appellant argues that since Brown is used "as a female razor" one having ordinary skill "would not take the disclosure of Rozenkranc to have any relevance...". This is not true. Both Brown and Rozenkranc are in the art of shaving razors. A trimming blade would be just as useful for women as for men, since adding a trimming blade to a female razor will allow her to shave precisely in areas of great sensitivity. Rozenkranc explicitly suggests that the razor is for precision cuts "for sideburns trimming or for similar purposes". Precision trimming, wherever desired is a "similar purpose" to trimming sideburns. Rozenkranc clearly motivates self combination with any other "multi-blade" razor since it allows for precision cuts wherever necessary. Precision cuts are applicable to female as well as male razors, and such a distinction cannot dissuade the examiner from the firm belief that adding a trimming blade to a razor in accordance with the claims is prima facie obvious.

Appellant alleges that the rearranging of parts of Brown is more than the rearranging of parts but involves a wholesale redesign. This is incorrect. The redesign necessary to move the blades of Brown is within the level of ordinary skill in the art. The steps involved are to select a place for the trimming blade, and to design a clip shaped in accordance therewith. The placement of the blade *dictates* the possible shapes of the

clip. It would not require *undue* experimentation to select one design and apply it. The shaping of a clip would not "be beyond his or her skill" as shown by the entire record of references which depict the level of ordinary skill.

Examiner is correct in asserting that "using known elements for their known functions is as a matter of law not patentable" where (as here) there are no secondary considerations of non-obviousness. That is the full meaning of KSR slip op at 24 lines 5-7. Appellant is seeking to patent the combination of old elements, which have been shown to be old, and has not asserted any secondary considerations.

Appellant alleges that Examiner is creating a new basis for rejection by saying that the claimed subject matter falls under the category of "ordinary creativity". This is understandable, however this was not the intent of the statement. It was meant to show that one of ordinary skill in the art would have been capable of combining Brown and Rozenkranc without basing the design exclusively on one or the other, and could have freeform designed a new razor using the teachings of Brown and Rozenkranc, but such a razor, while surely novel, would still be obvious, since it required *ordinary creativity*, as did the presently claimed device. The *reasons* to combine Brown and Rozenkranc have been treated exhaustively above, and will not be reiterated here.

Appellant alleges that Magrab is not instructive to the inquiry. Examiner believes that as a *general reference* it is perhaps the most applicable reference to establishing what the level of ordinary skill in the art is, And additionally provides a secondary motivation to the teachings and motivations for combination already present in the record. Appellant specifically alleges that the directive of Magrab applied to "Brown"

would not lead to the claimed invention. Perhaps; though it's application to a combination of Brown and Rozenkranc would.

A. ii.

Appellant alleges that examiner has provided no reason why one having ordinary skill would provide for the aperture to extend through the cartridge to the back thereof. This is not true, since in the rejection of claim 3 (which inherently includes claims 1 and 2) examiner has stated "making the legs bend about a portion of the bottom surface…is more secure". This is common sense. Having the clips be retained only by friction, or engagement with the interior of the plastic would be inferior to having the clips double back wrapping around a portion of the bottom to anchor the clip thereto. This rationale is equally applied to claim 2, and serves also to motivate having the clips extend through the housing, since it allows for the bending around the bottom surface.

Appellants allegation that the L-shaped structure "R" is not an aperture has been treated fully above, and is not persuasive. The discussion of aperture shown in figure 13 (aperture 2) is an additional consideration and is not necessary to establish motivation to have the leg extend to the back/bottom of the cartridge.

B.

Appellant alleges that the clips of Anderson could not be easily combined with the teaching of Brown that clips depend into apertures. This is incorrect. Either the clips could be formed to have the plastic molded around them and then have the bottoms bent, or the housing could be made to accommodate snapping the clip in (both legs at once), or it could be made to accommodate slipping/snapping one end of a clip in and

threading the remainder through a second aperture and then crimping the opposite end onto the housing, or some other means could be used. A person of ordinary skill in the art could have selected any one of these designs to utilize the known teachings in the art about having bent portions at the end of clips (Anderson), and extending clips through and into a housing (Brown).

C.

Appellant argues that Parmley does not cure the deficiencies of Brown Rozenkranc and Anderson, which is irrelevant, since the alleged deficiencies are not persuasive, as discussed above.

Appellant has alleged that "Examiner has not even alleged a reason why one having ordinary skill in the art would produce a razor having an asymmetrical structure". Citation to Rozenkranc shows a razor with asymmetrical features (i.e. a trimming blade on one side), and it was not elaborated that a clip used to retain blades in accordance with such a blade geometry would be asymmetric.

Appellant alleges that Parmley is not relevant to the inquiry. Examiner clearly and concisely set forth the relevance of Parmley above and as follows: "The structure defined has been composed of metal clips combined with plastic components, so the **field of problem solving endeavor with which the invention is concerned is use of metal with plastic.** Parmley is a general reference book for all mechanical components, having sections devoted to the problem of connecting plastic and metal, and offers a multitude of examples." (emphasis added).

It is unreasonable to assert, as appellant has, that a person of ordinary skill designing a razor housing made of plastic having a metal clip, both seen in the prior art would not think to consult a reference on the subject of connections involving plastic having metal components used therewith. The reference is concerned specifically with the same problem solving endeavor as appellant. See at least the asymmetrical embedded example in the right center of figure 3 on page 14-9 of Parmley.

Appellant again alleges there would be no indication to lead one to "modify the device of Brown to arrive at a device meeting the elements..." which is too narrow an interpretation of 35 USC §103, since 35 USC §103 requires the consideration of the totality of references in view of ordinary skill, and does not require that one reference be modified in view of the second reference, rather the inquiry extends to pure combinations of the teachings of all applicable references with the understanding of the knowledge of one of ordinary skill in the art, and any secondary considerations that bear on the inquiry. Rozenkranc and Brown may be fused in the mind without contemplating the exact modifications to one or the other; rather the teachings may inform a construct of known elements which one of ordinary skill can assemble without imparting every limitation of a reference which otherwise provides teachings and information.

C. i.

Appellant alleges that examiner was incorrect in asserting that there is no benefit to having the straight portion of the leg extend through the housing, by asserting the "advantages of the leg of the clip..." are shown "at p.10 lines 5-18". Examiner disagrees,

since the cited passage shows the benefit of having the leg bent sharply at the other end, not of having a *straight* leg through the housing.

C. ii.

Appellant alleges that the rejection of claim 90 is improper since the trimming blade requires a slot.

This is not persuasive, since Brown shows an aperture/slot/opening into which the clip depends, as described above regarding claims 1-3.

Appellant alleges there is *no reason* to allow the clip to extend through to the bottom surface, which is incorrect, since Anderson clearly motivates/gives a reason for having a clip extend to the back surface *for a more secure connection*. Since Brown shows clips depending into an aperture, it would make sense to modify them to allow the clip to extend therethrough, thus allowing the clips to be bent around a bottom portion of the housing which would allow for a more secure connection.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Sean M Michalski/

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/Kenneth Peterson/

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